

# **Notice of Allowability**

**Application No.**

10/054,552

**Examiner**

Anand U Desai, Ph.D.

**Applicant(s)**

NETT ET AL.

**Art Unit**

1653

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to January 10, 2005.
2. ☒ The allowed claim(s) is/are 9-22.
3. ☒ The drawings filed on 21 January 2002 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## **Attachment(s)**

- |   |  |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                    |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance              |
|   | 9. <input checked="" type="checkbox"/> Other <u>See Continuation Sheet</u> .           |

### **DETAILED ACTION**

1. This office action is in response to Amendment filed on January 10, 2005. Claims 1-8 have been cancelled. Claims 9-22 are currently pending and are under examination..

#### **Withdrawal of Rejections**

2. The rejection of claims 9-18, 21, and 22 under the judicially created doctrine of obviousness-type double patenting over U.S. Patent 5,378,688 is withdrawn based on Applicant's submission of a terminal disclaimer.

3. The rejection of claims 9-22 under the judicially created doctrine of obviousness-type double patenting over U.S. Patent 5,488,036 is withdrawn based on Applicant's submission of a terminal disclaimer.

4. The rejection of claims 9-22 under 35 U.S.C. §112, 2<sup>nd</sup> paragraph is withdrawn based on Applicant's amendment.

5. The rejection of claim 15 under 35 U.S.C. §112, 1<sup>st</sup> paragraph is withdrawn based on Applicant's agreement to the Examiner's Amendment.

### **EXAMINER'S AMENDMENT**

6. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Joseph E. Kovarik on February 16, 2005.

**Examiner's Amendment to the Specification:**

Please replace the current priority claim on page 1 of the application with the following:

This patent application is a continuation application of U.S. Patent Application Serial No. 09/551,933, now issued U.S. Patent No. 6,326,467; which is a continuation of U.S. Patent Application Serial No. 09/354,295, now issued U.S. Patent No. 6,419,655; which is a continuation of U.S. Patent Application No. 09/015,729, now issued U.S. Patent No. 6,103,881; which is a continuation of U.S. Patent Application Serial No. 08/481,128, now issued U.S. Patent No. 5,786,457; which is a continuation of U.S. Patent Application Serial No. 08/094,625, now issued U.S. Patent No. 5,488,036; which is a continuation of U.S. Patent Application Serial No. 08/094,250, now issued U.S. Patent No. 5,492,893; which is a continuation of U.S. Patent Application Serial No. 08/591,917, now issued U.S. Patent No. 5,707,964; which is a continuation of U.S. Patent Application Serial No. 08/088,434, now issued U.S. Patent No. 5,631,229; which is a continuation of U.S. Patent Application Serial No. 07/837,639, now issued U.S. Patent No. 5,378,688; which is a continuation-in-part of U.S. Patent Application 07/314,653, filed February 23, 1989 (now abandoned), which claims benefit of U.S. Provisional Application 60/093,087, filed July 16, 1998.

Please replace the description of figure 2, located on page 30, lines 7-9, with the following:

~~Figure 2~~ Figures 2A and 2B indicates inactivation of certain grain hemitoxins (wheat hemitoxin, 2A, and barley hemitoxin, 2B) by SPDP conjugation.

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**Examiner's Amendment to the Claims:**

15. (Currently Amended) The method of claim 9, wherein said single chain toxin is selected from the group consisting of pokeweed antiviral protein,  $\alpha$ -amanitin, gelonin ribosome inhibiting protein ("RIP"), barley RIP, wheat RIP, corn RIP, rye RIP, and flax RIP [[,]]~~and modified forms thereof.~~

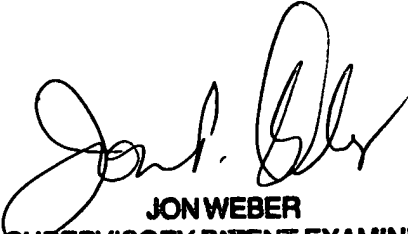
***Allowable Subject Matter***

7. Claims 9-22 are allowable.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anand U Desai, Ph.D. whose telephone number is (571) 272-0947. The examiner can normally be reached on Monday - Friday 9:00 a.m. - 5:30 p.m..

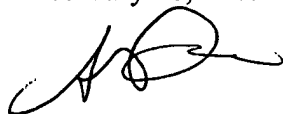
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon P. Weber can be reached on (517) 272-0925. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

  
**JON WEBER**  
**SUPERVISORY PATENT EXAMINER**

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

February 16, 2005

A handwritten signature in black ink, appearing to be a stylized 'A' or 'B' followed by a flourish.